

REMARKS

Please reconsider the application in view of the following remarks. Applicant thanks the Examiner for carefully considering this application.

Disposition of Claims

Claims 1, 3-15, 18, 19, 21, 27, and 30-39 are pending in the application. Claims 1, 19, 30, and 39 are independent. The remaining claims depend, directly or indirectly, from claims, 1, 19, and 30.

Rejections under 35 U.S.C. § 103Claims 1, 3-7, 9, 10, 12, 13, 15, 18, 30, 33, 35-37, and 39

Claims 1, 3-7, 9, 10, 12, 13, 15, 30, 33, 35-39 stand rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent Application Publication No. US 2004/0128508 ("Wheeler") in view of U.S. Patent No. 4,502,609 ("Christatos"), and further in view of U.S. Patent No. 7,111,318 ("Vitale") and U.S. Patent No. 6,785,908 ("Kamiya"). To the extent this rejection applies to the pending claims, the rejection is respectfully traversed.

The Examiner has purported to forth a *prima facie* case of obviousness for the aforementioned claims.¹ In response the Examiner's *prima facie* case of obviousness, the Applicants submit the following rebuttal arguments.² Rebuttal evidence may include evidence of

¹ This statement should not be construed as an admission by the Applicant that the Examiner has established a *prima facie* case of obviousness.

² "If a *prima facie* case of obviousness is established, the burden shifts to the applicant to come forward with arguments and/or evidence to rebut the *prima facie* case. See, e.g., *In re Dillon*, 919 F.2d 688, 692, 16 USPQ2d 1897, 1901 (Fed. Cir. 1990)." MPEP § 2145

“secondary considerations,” such as “commercial success, long felt but unsolved needs, [and] failure of others.” *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966).

In the instant case, the Applicant asserts that there are secondary considerations, namely long felt by unsolved needs and failure of others, which render the pending claims non-obvious in view of the prior art.

Pursuant to MPEP §§ 716.04 and 2145, in order to establish long-felt need and failure of others, the Applicant must show evidence of the following:

- (i) “Establishing long-felt need requires objective evidence that an art recognized problem existed in the art for a long period of time without solution. [Accordingly], the need must have been a persistent one that was recognized by those of ordinary skill in the art. *In re Gershon*, 372 F.2d 535, 539, 152 USPQ 602, 605 (CCPA 1967)” MPEP § 716.04
- (ii) The long-felt need must not have been satisfied by another before the invention by applicant.
- (iii) The invention must in fact satisfy the long-felt need. *In re Cavanagh*, 436 F.2d 491, 168 USPQ 466 (CCPA 1971)³.

In support of the Applicant’s assertion of secondary considerations, the Applicant’s submit three 37 C.F.R. § 1.132 Declarations: (a) Declaration of Robert Shugarman (“Shugarman Declaration”), (b) Declaration of Robert V. Moel (Moel Declaration), and (c) Declaration of Terry Paul (“Paul Declaration”) (collectively referred to as “Declarations”).

³ There must be a nexus between the rebuttal evidence and the claimed invention, i.e., objective evidence of nonobviousness must be attributable to the claimed invention. See MPEP § 2145.

Robert Shugarman, Robert V. Moel, and Terry Paul are individuals with extensive knowledge about the Cable Television Infrastructure as well as issues dealing with Cable Theft in the multi-dwelling unit (MDU) environment. (*see* Shugarman Declaration, items 2-4; Moel Declaration, items 2-5, Paul Declaration, items 2-4)

The Declarations establish that cable theft in the MDU environment has been an issue since at least the mid-1980s (*see* Shugarman Declaration, item 11; Moel Declaration, item 12, Paul Declaration, items 3 and 11).

Cable Theft in the MDU Environment has occurred and continues to occur in at least the following manner: (a) Legacy Cable Distribution Boxes were physically compromised by unauthorized parties breaking into the Legacy Cable Distribution Boxes. The unauthorized parties subsequently connected non-customers to enable them to receive cable service from the Legacy Cable Distribution Box; (b) Legacy Cable Distribution Boxes were left open by Cable Company Contractors and Employees. Unauthorized parties subsequently connected non-customers to enable them to receive cable service from the Legacy Cable Distribution Box; (c) Keyed locks used to secure the Legacy Cable Distribution Boxes are easily duplicated (or readily available) and, accordingly, available for current and former Cable Company Contractors and Employees to access Legacy Cable Distribution Boxes and subsequently connected non-customers to enable them to receive cable service from the Legacy Cable Distribution Box. *See* Shugarman Declaration, item 11; Moel Declaration, item 12; Paul Declaration, items 12.

The approach to combating cable theft in the MDU Environment has not changed/been successfully improved in at least the last 15 years. *See* Shugarman Declaration, items 4-12; Moel

Declaration, items 6-14; Paul Declaration, items 6-13. Accordingly, the long-felt need has not been satisfied by another before the invention by Applicant.

The claimed invention successfully addresses cable theft in the MDU environment as follows:

- (i) Providing a mechanism to remotely authorize access to the RSS Cable Distribution Box. This mechanism enables fine-grained control of who can access a particular RSS Cable Distribution Box including removing access to former Cable Company Employees and Contractors. (*See e.g.*, claims 1, 7, 8, 19, 21, 30, and 39)
- (ii) Providing a mechanism to enable unlocking on the RSS Cable Distribution Boxes after remote authorization has been granted. (*See e.g.*, claims 1, 19, 30, 33, and 39)
- (iii) Tracking access to the RSS Cable Distribution Boxes using a work log, which may be remotely accessed. (*See e.g.*, claims 10, 11-12, 19, 23, 24, 30, 31, and 39).

The success of the claimed invention is evidenced by the decrease in cable theft experienced by Cable Operators, which have deployed Cable Distribution Boxes embodying the claimed invention. *See* Shugartman Declaration, items 13 and 15; Paul Declaration, items 16 and 18

In view of the above, Applicant asserts that there are long felt by unsolved needs and failure of others, which renders the pending claims non-obvious in view of the prior art.

Based on the above, independent claims 1, 30, and 39 are patentable over Wheeler, Christatos, Vitale, and Kamiya, either alone or in combination. Additionally, claims depending from amended independent claims 1, 30, and 39 are also patentable for at least the same reasons. Accordingly, withdrawal of the rejection is respectfully requested.

Claims 19, 21-23, and 25-26

Claims 19, 21-23, and 25-26 stand rejected under 35 U.S.C. § 103 as being unpatentable over Wheeler, Christatos, and Kamiya. To the extent that this rejection applies to the amended claims, the rejection is traversed.

As discussed above with reference to independent claim 1, Applicant asserts that there are long felt by unsolved needs and failure of others, which renders the pending claims non-obvious in view of the prior art. Independent claim 19 includes at least the same patentable limitations as independent claim 1 and, thus, is patentable over Wheeler, Christatos, and Kamiya for at least the same reasons as independent claims 1. Further, dependent claims 21-23 and 25-26 are patentable over Wheeler, Christatos, and Kamiya for at least the same reasons as independent claim 19. Accordingly, withdrawal of this rejection is respectfully requested.

Claim 8

Claim 8 stands rejected under 35 U.S.C. § 103 as being unpatentable over Wheeler, Christatos, Vitale, Kamiya, and U.S. Patent No. 6,472,973 ("Harold"). To the extent that this rejection applies to the amended claims, the rejection is traversed.

As discussed above with reference to independent claim 1, Applicant asserts that there are long felt by unsolved needs and failure of others, which renders the pending claims non-obvious in view of the prior art. Accordingly, Wheeler, Christatos, Vitale, Kamiya, and Harold, whether considered separately or in combination, fail to render independent claim 1 obvious. Accordingly, independent claim 1 is patentable over Wheeler, Christatos, Vitale, Kamiya, and Harold. Dependent claim 8 is patentable over Wheeler, Christatos, Vitale, Kamiya, and Harold for at least the same reasons as independent claim 1. Accordingly, withdrawal of this rejection is respectfully requested.

Claims 11, 24, 31, and 32

Claims 11, 24, 31, and 32 stand rejected under 35 U.S.C. § 103 as being unpatentable over Wheeler, Christatos, Vitale, Kamiya, and U.S. Patent Application Publication No. US 2002/0147982 ("Naidoo"). To the extent that this rejection applies to the amended claims, the rejection is traversed.

As discussed above with reference to independent claims 1, 19, and 30, Applicant asserts that there are long felt by unsolved needs and failure of others, which renders the pending claims non-obvious in view of the prior art. Accordingly, Wheeler, Christatos, Vitale, Kamiya, and Naidoo, whether considered separately or in combination, fail to render independent claims 1, 19, and 30 obvious. Accordingly, independent claims 1, 19, and 30 are patentable over Wheeler, Christatos, Vitale, Kamiya, and Naidoo. Dependent claims 11, 24, 31, and 32 are patentable over Wheeler, Christatos, Vitale, Kamiya, and Naidoo for at least the same reasons as the

aforementioned independent claims. Accordingly, withdrawal of this rejection is respectfully requested.

Claims 14, 27, and 34

Claims 14, 27, and 34 stand rejected under 35 U.S.C. § 103 as being unpatentable over Wheeler, Christatos, Vitale, Kamiya, and U.S. Patent Application Publication No. US 2004/0050930 ("Rowe"). To the extent that this rejection applies to the amended claims, the rejection is traversed.

As discussed above with reference to independent claims 1, 19, and 30, Applicant asserts that there are long felt by unsolved needs and failure of others, which renders the pending claims non-obvious in view of the prior art. Accordingly, Wheeler, Christatos, Vitale, Kamiya, and Rowe, whether considered separately or in combination, fail to render independent claims 1, 19, and 30 obvious. Accordingly, independent claims 1, 19, and 30 are patentable over Wheeler, Christatos, Vitale, Kamiya, and Rowe. Dependent claims 14, 27, and 34 are patentable over Wheeler, Christatos, Vitale, Kamiya, and Rowe for at least the same reasons as the aforementioned independent claims. Accordingly, withdrawal of this rejection is respectfully requested.

Conclusion

Applicant believes this reply is fully responsive to all outstanding issues and places this application in condition for allowance. If this belief is incorrect, or other issues arise, the Examiner is encouraged to contact the undersigned or his associates at the telephone number listed below. Please apply any charges not covered, or any credits, to Deposit Account 50-0591 (Reference Number 17065/004001).

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Respectfully submitted,

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Attachments:

- (a) Declaration of Robert Shugarman
- (b) Declaration of Robert V. Moel
- (c) Declaration of Terry Paul.